IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 15, 2008 Session

TERESA ANGELA ROSS v. GREGORY BRUCE ROSS, SR.

Appeal from the Chancery Court for Williamson County
No. 32575 Robert E. Lee Davies, Judge

No. M2008-00594-COA-R3-CV - Filed December 10, 2008

This appeal arises out of a domestic action wherein attorney Connie Reguli was held in criminal contempt for allegedly instructing her client, the father of the parties' child, to disregard an order that awarded the mother overnight parenting time. Ms. Reguli appeals her conviction on numerous grounds. We have determined the conviction must be reversed on two grounds. The order, which was an oral command proclaimed from the bench, is neither specific or unambiguous concerning when the mother's overnight parenting time would occur; therefore, an essential element of contempt, that of specificity, is missing. Further, the evidence is insufficient to establish that attorney Reguli instructed her client to violate the trial court's order.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which RICHARD H. DINKINS, J., and WALTER J. KURTZ, SR. J., joined.

Connie Reguli, Brentwood, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter, and Juan G. Villaseñor, Assistant Attorney General, for the appellee, State of Tennessee.

OPINION

Attorney Connie Reguli was held in criminal contempt for allegedly instructing her client, Gregory Ross (Father), to violate the trial court's order, stated from the bench on November 27, 2007, which awarded Teresa Ross (Mother) two nights of overnight parenting time with the parties' only child every other week.[1] The issues presented in this appeal are limited to Ms. Reguli's conviction for criminal contempt.

---

[1] Prior to this modification, Mother had no overnight parenting time; in fact, she had no parenting time with the child except for the mandate that she participate in family counseling with the child after which she was permitted to have dinner with the child. After dinner, the child was to return to Father's residence.

Ms. Reguli has represented Father since the commencement of this action, which began when he filed the Complaint for Divorce on June 2, 2006. Mother, who has been represented by J. Timothy Street throughout this action, filed a timely Answer. Following a year of highly contentious proceedings, the trial court entered an order declaring the parties divorced and naming Father as the primary residential parent of the parties' sixteen-year-old son. In the order, Mother was awarded limited parenting time and privileges, and she was ordered to participate in family counseling with her son in order to improve their relationship. Significantly, the initial parenting order directed that Mother would not be allowed any overnight parenting time until eight counseling sessions had been completed and the counselor provided a progress report to the court indicating that awarding Mother overnight parenting time would be in the best interest of the child.

One month after the initial parenting order was entered, Mother filed a Motion for Visitation. Three weeks later, on August 1, 2007, she filed another motion to modify visitation. The motions were heard on August 7, 2007. Pursuant to an order entered on August 17, 2007, the trial court denied the motions and ordered Mother and son to attend counseling with Dr. Douglas Herr.

Thereafter, Dr. Herr sent an *ex parte* email to the trial judge, in which Dr. Herr took the liberty of privately expressing various concerns to the trial court. Because of the concerns expressed by Dr. Herr in the email, the trial court issued a Show Cause Order compelling Father and his brother, the child's uncle, to demonstrate why they should not be held in criminal contempt.[2]

On November 7, 2007, the trial court issued a *sua sponte* order requiring the parties to appear on Tuesday, November 27, 2007, to "evaluate the progress of the counseling." In the order, the trial court identified the "continued concerns" of Dr. Herr as the basis for the hearing. Ms. Reguli timely responded to the order, informing the trial court that she had a conflict and would be unable to attend the November 27 hearing and requesting a short continuance. The hearing was not continued. Accordingly, Ms. Reguli sent her associate, Megan Woodson, to represent Father at the hearing, and Mr. Street attended the hearing on behalf of his client, Mother. Neither Father nor Mother attended the November 27 hearing and there is no transcript of this hearing.[3]

The only testimony presented at the November 27 hearing was that of Dr. Herr. After hearing from Dr. Herr, the trial court concluded that Mother should be awarded unsupervised, overnight parenting time with the child two days every other week. The new parenting schedule was to begin the following week, which began on Monday, December 3, 2007; however, the trial court did not specify which two days of that week Mother would have overnight parenting time with the child. This was because Mother was a nurse and her work schedule for the following week was unknown. Thus, the court instructed Mr. Street to confer with his client to determine Mother's preference for

[2]The Show Cause Order against Father and his brother was subsequently dismissed.

[3]The only record we have of what occurred at the November 27 hearing is provided by the testimony of Megan Woodson and Timothy Street, which was elicited in the hearings held on December 11, 2007 and January 29, 2008.

overnight visitation. The trial court, therefore, did not specify in its ruling from the bench the two days on which Mother's overnight parenting time would occur.

As the court had requested, Mr. Street subsequently conferred with Mother to determine the specific days her overnight parenting time would occur. On Wednesday, November 28, Mr. Street submitted a written order that specified Mother's two days of overnight parenting time would commence on Tuesday, December 4, and that it would occur every other week thereafter. Mr. Street filed the proposed order with the clerk and served a copy of the proposed order upon Ms. Reguli on November 28, 2007. Although the proposed order suggested that Mother's newly awarded parenting time would commence on Tuesday, December 4, the proposed written order was not approved by the trial court until the following Wednesday, December 6, after Mother's overnight parenting time was to end.

Mr. Street sent a letter to Ms. Reguli on December 4 asking that she confirm her client was prepared to make the child available for the overnight parenting time on Tuesday, December 4 as stated in the proposed order. On December 5, Ms. Reguli sent a letter to Mr. Street, via facsimile, stating the following:

> As to the December 4th letter, I am filing today an application for Rule 10 extraordinary relief to the Court of Appeals. I believe the recent actions of the court regarding Doug Herr and his *sua sponte* hearings to modify the parenting plan are void. In that regard, my client does not intend for [his son] to spend two days at [Mother's] home.

As indicated in her letter, Ms. Reguli filed on her client's behalf an application for extraordinary relief pursuant to Tenn. R. App. P. 10. On behalf of Father, she also filed a Motion to Stay the Order of the Court on December 5. Neither the Rule 10 request for relief or motion for a stay were granted.

Although Father's request for relief and a stay were not granted, Father did not make the child available for visitation on the two days stated in the proposed order. Therefore, on December 10, Mother filed an Expedited Motion for Contempt against Father. On the following day, December 11, the trial court held a hearing on Mother's motion for contempt, as well as other motions filed by Father. During the December 11 hearing, the trial court requested Father take the stand to explain his attitude towards his son's visitation with Mother and whether he was going to comply with the modified parenting schedule. As the trial court requested, Father took the stand and testified. At the close of Father's testimony, the trial court learned that Mother did not have parenting time with the child the previous week, whereupon the following exchange occurred:

> The Court: When does this [school] semester end?
> Father: Well, next week, that's the week of the 17th, and I believe when is requested is that of the 19th through the 21st, he would have a special visitation.
> The Court: He didn't have it this week?

Father: No. It was supposed to be last week and --
Mr. Street: Didn't show up. They violated the Court's orders.
Ms. Reguli: We didn't –
Father: We didn't have a court order.
The Court: Did you not know about it?
Father: I didn't have any paperwork and I talked to--
The Court: That's not what I asked you. Did you not know?
Father: All I knew was what [my son] told me.
The Court: How did [he] know?
Father: Because he heard it from his mother at the counseling session and I said, well, that if there's a court order, it's signed by [the judge] that would be what we have to do, but wait until I talk to the attorney. And I did and they had no court order in their hands at the time.

Following this exchange, a discussion occurred between the trial court, Ms. Reguli and Mr. Street, whereupon Mr. Street stated that he had submitted an order to the court, but that it was not signed prior to when the parenting time was to have occurred. The court then questioned Ms. Reguli as to her knowledge regarding the proposed order submitted by Mr. Street. Ms. Reguli stated that while she was aware overnight parenting time had been ordered, she was unaware of the specific days until December 4. The court then instructed Ms. Reguli to summon her associate Ms. Woodson, who was present at the November 27 hearing, to court. Ms. Reguli complied and upon Ms. Woodson's appearance, the trial court questioned Ms. Woodson about the circumstances of that hearing:

The Court: And at that hearing, I set up this visitation for Mrs. Ross, remember that?
Ms. Woodson: Uh-huh.
The Court: And I want to know, did you understand that those two days were to begin the next week after we had our hearing?
Ms. Woodson: Yes. I wrote down on my notes that the order was to begin the next week.
The Court: That's exactly what the clerk's notes say too. So we're all in agreement then. So that would have meant that they would have begun – when did you tell me, Ms. Woodson?
Ms. Woodson: the 27th was the day of the hearing.
The Court: All right. That would have meant that they would have begun, I guess, December 5th.
Ms. Woodson: Well, you didn't say any specific days that day.
The Court: I didn't?
Ms. Woodson: There was no specific days, you just said two days every other week.
The Court: Two day's, that's right, two days every other week and she was supposed to check her schedule. So that would have begun the week of December the third.
Ms. Woodson: Yeah. And we didn't receive that –

The Court: Did you communicate my ruling to Ms. Reguli?
Ms. Woodson: Yes. I gave my notes to her.

Following the court's questioning of Ms. Woodson, the court advised Ms. Reguli that it would be issuing an order for a show cause hearing for contempt against her. On December 21, Deputy District Attorney Derek Smith sent the judge a letter requesting the issuance of a show cause order. The court issued the show cause order on December 27, 2007, in which the court ordered Ms. Reguli to appear on January 29, 2008 "to show cause why she should not be held in criminal contempt of court pursuant to T.C.A. § 29-9-102(3)." As the basis for the show cause order, the order stated that at "a hearing on December 11, 2007, [Father] testified he did not allow [his son] to have overnight visitation the week of December 3 as ordered by this Court on the advice of his attorney, Connie Reguli." The show cause order appointed Deputy District Attorney Smith to prosecute the contempt charge.

During the show cause hearing on January 29, 2008, the State presented the testimony of Mr. Street, Ms. Woodson, and Mother, each of whom testified that Mother did not have overnight parenting time with the child during the week of December 3. Father did not testify and Ms. Reguli did not testify. At the conclusion of the hearing, the trial court found Ms. Reguli guilty of criminal contempt for "deliberately counseling her client to disregard the ruling of the Court, wherein she told her client, Mr. Ross, to disobey the Court's command and order to provide visitation" in violation of Tenn. Code Ann. § 29-9-102. The court sentenced Ms. Reguli to ten days in jail and imposed a fine of $50. Ms. Reguli appealed.

STANDARD OF REVIEW

The factual findings of the trial court are accorded a presumption of correctness and will not be overturned unless the evidence preponderates against them. *Moody v. Hutchison*, 159 S.W.3d 15, 25-26 (Tenn. Ct. App. 2004) (citing Tenn. R. App. P. 13(d); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001)). With respect to legal issues, our review is conducted "under a pure *de novo* standard of review, according no deference to the conclusions of law made by the lower courts." *Id*. at 26 (quoting *Southern Constructors, Inc. v. Loudon County Bd. Of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001)).

"Criminal contempt convictions are punitive in character, and their primary purpose is to vindicate the court's authority." *Thigpen v. Thigpen*, 874 S.W.2d 51, 53 (Tenn. Ct. App. 1993) (citing *Gunn v. Southern Bell Tel. & Tel. Co.*, 296 S.W.2d 843, 844 (1956); *Garrett v. Forest Lawn Memorial Gardens*, 588 S.W.2d 309, 315 (Tenn. Ct. App. 1979)). Persons charged with criminal contempt are presumed innocent and the State bears the burden of proving guilt beyond a reasonable doubt. *Id*. (citing *Nashville Corp. v. United Steelworkers of Am.*, 215 S.W.2d 818, 821 (Tenn. 1948); *O'Brien v. State ex rel. Bibb*, 170 S.W.2d 931, 932 (Tenn. Ct. App. 1942)).

Once convicted of criminal contempt, a person loses their presumption of innocence. *Id*. (citing *Robinson v. Air Draulics Eng'g Co.*, 377 S.W.2d 908, 912 (Tenn. 1964)). On appeal, they

bear the burden of overcoming their presumption of guilt. *Id*. (citing *Nuclear Fuel Servs., Inc. v. Local No. 3-677*, *Oil, Chem., & Atomic Workers Int'l Union*, 719 S.W.2d 550, 552 (Tenn. Crim. App. 1986)). "Appellate courts do not review the evidence in a light favorable to the accused and will reverse criminal contempt convictions only when the evidence is insufficient to support the trier-of-fact's finding of contempt beyond a reasonable doubt." *Id*. (citing Tenn. R. App. P. 13(e)).

ANALYSIS

I.
CONTEMPT

The Tennessee General Assembly has empowered the courts of this state to inflict punishments for contempts of court. *Konvalinka v. Chattanooga-Hamilton County Hosp. Auth.*, 249 S.W.3d 346, 354 (Tenn. 2008). One of the statutory provisions enacted by the Legislature allows a charge of contempt for the "willful disobedience or resistance of any officer of the such courts, . . . to any lawful . . . order, . . . or command of such courts." Tenn. Code Ann. § 29-9-102(3). Criminal contempt convictions are punitive in character. *Thigpen v. Thigpen*, 874 S.W.2d 51, 53 (Tenn. Ct. App. 1993). The primary purpose of a criminal contempt conviction is to vindicate the court's authority. *Id*. (citing *Gunn v. Southern Bell Tel. & Tel. Co.*, 296 S.W.2d 843, 844 (1956); *Garrett v. Forest Lawn Memorial Gardens*, 588 S.W.2d 309, 315 (Tenn. Ct. App. 1979)).

There are four essential elements of a contemptuous violation of a court order or command. *Konvalinka* at 354-55. The order alleged to have been violated must be "lawful," the order alleged to have been violated must be "specific and unambiguous," the person alleged to have violated the order must have actually disobeyed the order, and that person's violation of the order must have been "willful." *Id*.

A. THE LAWFUL ORDER

The first determination we must make is whether the oral command as proclaimed by the court from the bench on November 27, 2007, or the written order that followed, constituted a lawful order when Ms. Reguli is alleged to have violated the court's order.[4] This determination is important because the court's oral proclamation from the bench and the written order approved by the trial court the following week are different in one material respect; the written order specified the exact

[4] A trial court's oral command, as proclaimed from the bench, may constitute a valid order and under Tenn. Code Ann. § 29-9-102(3) a court is authorized to convict a person of criminal contempt for the violation of not only written orders but also oral *commands* of the court. *See* Tenn. Code Ann. § 29-9-102(3).

dates for Mother's overnight parenting time,[5] while the oral command as expressed by the trial court from the bench did not specify the dates Mother was to have overnight parenting time.

We have determined the proposed written order submitted by Mr. Street following the hearing, which contained the specific dates at issue here, had not received the approval of the trial court as evidenced by the judge's signature. Therefore, the proposed written order did not constitute a lawful order when the alleged contemptuous conduct occurred.

As for the oral command from the bench, a trial court's oral command that is to take effect prior to a written order being entered may constitute a lawful order.[6] As this court explained in *Outdoor Mgmt., LLC v. Thomas*, 249 S.W.3d 368, 376-77 (Tenn. Ct. App. 2007):

> Among the conduct that courts have the authority to punish as contempt is "[t]he willful disobedience . . . to any lawful . . . *command* of such courts." T.C.A. § 29-9-102(3). The language of T.C.A. § 29-9-102(3) is unambiguous. Two elements are required for a finding of contempt: (1) willful disobedience or resistance, and (2) a lawful . . . *command* of a court of this State. T.C.A. § 29-9-102(3); *State v. Winningham*, 958 S.W.2d 740, 745 (Tenn. 1997). A court order *specifically* mandating or prohibiting the alleged contemptuous conduct is essential. *See Overnite Transp. Co. v. Teamsters Local Union No. 480*, 172 S.W.3d 507, 511-12 (Tenn. 2005).

(emphasis added). As we will discuss in detail below, such an oral command must, *inter alia*, be sufficiently specific in all material respects, including when the oral order is to be effective and

---

[5] The proposed written order, drafted by Mr. Street after consultation with his client, stated the specific dates for the overnight parenting time. These dates, however, were not stated by the trial court from the bench on November 27; instead, the court requested that Mr. Street confer with his client after the hearing (because she was not in attendance), determine the specific dates she desired, and incorporate those dates into the "proposed" written order.

[6] Although oral commands from the bench may constitute lawful orders, all orders of a court should be reduced to writing, filed with the Clerk and submitted to the judge for his or her approval in a timely manner. Further, an oral command from the bench may not constitute a final judgment. *See Blackburn v. Blackburn*, No. E2006-00753-SC-R11-CV, 2008 WL 4877136, at *5, ___ S.W.3d ___, ___ (Tenn. Nov. 13, 2008); *see also State v. Hall*, No. M2003-01328-COA-R9-JV, 2003 WL 22964300, at *5 (Tenn. Ct. App. Dec. 16, 2003) (citing *Hickle v. Irick*, 300 S.W.2d 54, 57 (Tenn. Ct. App. 1956); *Hines v. Thompson*, 148 S.W.2d 376 (Tenn. Ct. App.1940); *Sparkle Laundry and Cleaners, Inc. v. Kelton*, 595 S.W.2d 88, 93 (Tenn. Ct. App. 1979); *Envtl. Abatement v. Astrum R.E.*, 27 S.W.3d 530 (Tenn. Ct. App. 2000)). As our Supreme Court recently stated in *Blackburn*, the purpose of Tenn. R. Civ. P. 58 "is to insure that a party is aware of the existence of a final, appealable judgment in a lawsuit in which he is involved." *Id*. (citing *DeLong v. Vanderbilt Univ*., 186 S.W.3d 506, 510 (Tenn. Ct. App. 2005); *see also* Tenn. R. Civ. P. 58, advisory comm'n cmt. (stating that Rule 58 "is designed to make uniform across the State the procedure for the entry of judgment and to make certain the effective date of the judgment"). The failure to adhere to the requirements set forth in Rule 58 prevents a court's final judgment from becoming effective. *Id*. (citing *DeLong*, 186 S.W.3d at 509). Therefore, Tenn. R. Civ. P. 58 must be complied with when an order is intended to be a final, appealable judgment. *See Masters ex rel. Masters v. Rishton*, 863 S.W.2d 702, 705 (Tenn. Ct. App. 1992).

specifically what is mandated or prohibited. *See Outdoor Mgmt., LLC*, 249 S.W.3d at 377 (citing *Overnite Transp. Co. v. Teamsters Local Union No. 480*, 172 S.W.3d 507, 511-12 (Tenn. 2005)).

B. WAS THE ORAL COMMAND SPECIFIC AND UNAMBIGUOUS AS TO PARENTING TIME?

The second essential element is that the court order that was allegedly violated must have "*specifically* mandated or prohibited" the alleged contemptuous conduct. *See Outdoor Mgmt., LLC*, 249 S.W.3d at 377; *see also Overnite Transp. Co.*, 172 S.W.3d at 511-12 (emphasis added). Stated another way, the order must be "specific" and "unambiguous." *Konvalinka*, 249 S.W.3d at 354-55 (citing *Doe v. Bd. of Prof'l Responsibility*, 104 S.W.3d 465, 471 (Tenn. 2003); *Long v. McAllister-Long*, 221 S.W.3d 1, 14 (Tenn. Ct. App. 2006)). Whether an order is ambiguous presents a legal issue. Our review of a legal issue is conducted "under a pure *de novo* standard of review, according no deference to the conclusions of law made by the lower courts." *Moody*, 159 S.W.3d at 26 (quoting *Southern Constructors, Inc. v. Loudon County Bd. Of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001)).

When the trial court rendered its oral command from the bench, the court did not specifically mandate that Mother's overnight parenting time occur on December 4, or December 5, or December 6, the dates at issue. The court merely ordered that overnight parenting time commence "next week," on dates to be determined following the hearing. Instead of specifying the dates, the court instructed Mr. Street to confer with his client and thereafter submit the dates she desired in a written order to be filed with the court. Accordingly, the trial court's order did not specify the critical dates; therefore, the oral command was neither specific or unambiguous concerning when Mother's overnight parenting time would occur. Because the order that was lawful at the critical time did not specify the exact dates and times the parenting time would occur, the essential element of specificity is missing.

C. THE EVIDENCE IS INSUFFICIENT TO SUSTAIN THE CONVICTION

Our determination that the order, which was allegedly violated, lacked specificity and, therefore, was ambiguous requires a reversal of the conviction of contempt. Nevertheless, we believe it is important to address whether the evidence in the record is sufficient to prove beyond a reasonable doubt that Father's attorney, Ms. Reguli, instructed Father to violate the order. We have determined it is not.

Persons charged with criminal contempt are presumed innocent and the State bears the burden of proving guilt beyond a reasonable doubt. *Thigpen*, 874 S.W.2d at 53 (citing *Nashville Corp. v. United Steelworkers of Am.*, 215 S.W.2d 818, 821 (Tenn. 1948); *O'Brien v. State ex rel. Bibb*, 170 S.W.2d 931, 932 (Tenn. Ct. App. 1942)). Once convicted of criminal contempt, however, the convicted person loses the presumption of innocence. *Id*. (citing *Robinson v. Air Draulics Eng'g Co.*, 377 S.W.2d 908, 912 (Tenn. 1964)). Therefore, the appellate courts do not review the evidence in a light favorable to the convicted person; nevertheless, it is our duty to reverse criminal contempt convictions when the evidence is insufficient to support the trier-of-fact's finding of contempt

beyond a reasonable doubt. *Id*. (citing Tenn. R. App. P. 13(e)). On appeal, the convicted person bears the burden of overcoming the presumption of guilt. *Id*. (citing *Nuclear Fuel Servs., Inc. v. Local No. 3-677*, *Oil, Chem., & Atomic Workers Int'l Union*, 719 S.W.2d 550, 552 (Tenn. Crim. App. 1986); Tenn. R. App. P. 13(e)).

In determining the sufficiency of the convicting evidence, the appellate court does not re-weigh or re-evaluate the evidence. *State v. Johnston*, No. E2002-02028-CCA-R3-CD, 2003 WL 23094414, at *3 (Tenn. Crim. App. Dec. 30, 2003) (citing *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990)). Nor may we substitute inferences for those drawn by the trier of fact from circumstantial evidence. *Id.* (citing *Liakas v. State*, 286 S.W.2d 856, 859 (Tenn. 1956)). To the contrary, a court is "required to afford the state the strongest legitimate view of the evidence contained in the record as well as all reasonable and legitimate inferences which may be drawn from the evidence." *Id.* (citing *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978)). Questions concerning the credibility of the witnesses, the weight and value to be given the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact, not this court. *Id*. Therefore, this court will not disturb a verdict of guilty due to the sufficiency of the evidence unless the relevant facts contained in the record are insufficient, as a matter of law, for a rational trier of fact to find that the accused is guilty beyond a reasonable doubt. *Id.* (citing *State v. Tuggle,* 639 S.W.2d 913, 914 (Tenn. 1982)).

The State had the burden at trial to prove beyond a reasonable doubt that Ms. Reguli willfully and deliberately instructed her client to disregard the court's oral command from the bench on November 27. It is undisputed that Ms. Reguli believed the trial court's ruling, whereby Mother was awarded overnight parenting time, was invalid, because she contended *inter alia*, the trial court lacked jurisdiction to modify the parenting schedule and the Permanent Parenting Plan required the parties to participate in mandatory mediation for visitation disputes, prior to seeking a remedy from the court, which had not been requested or attempted by either party.[7]

Whether Ms. Reguli was correct or incorrect in her belief that the order modifying the parenting schedule was valid or not, as an advocate for her client, she had the right and the duty, if her client requested it and there was a basis in law and fact to do so, to vigorously challenge the oral command proclaimed from the bench on November 27. *See Model Rules of Prof'l Conduct* Canon 7 (1983) ("The duty of a lawyer to his client and his duty to the legal system are the same: to represent his client zealously within the bounds of the law."). Indeed, as Father's attorney, Ms. Reguli owed her client the affirmative duty to advance his interests and advocate on his behalf. Informing the trial court of her objections to its ruling and pursuing an extraordinary appeal by filing an application for relief from the ruling pursuant to Tenn. R. App. P. 10 were proper. Accordingly, there is no basis upon which to find, or to infer from her zealous representation of her client, that she was contemptuous in her zealous advocacy of her client's interests. Accordingly, we must look beyond her expressed opposition to the ruling and the fact that she sought Tenn. R. App. P. 10 relief

[7] An order issued by the judge on August 17 following Mother's Motion to Modify Visitation also required that the parties engage in mediation regarding visitation disputes before filing a motion within the trial court.

on behalf of her client to determine if the evidence is sufficient to sustain her conviction for criminal contempt.

The State asks us to rely on circumstantial evidence alone to affirm the finding that Ms. Reguli is guilty of criminal contempt. The State maintains that Ms. Reguli "instructed her client" to disregard, thus disobey, the trial court's November 27 order. The fallacy in the State's argument is that there is absolutely no evidence, circumstantial or direct, upon which to conclude that Ms. Reguli "instructed her client" to "disobey" any order, much less the trial court's oral command from the bench on November 27. The trial court's show cause order compelling Ms. Reguli to show cause why she should not be held in contempt arose out of the testimony of Father at the December 11 hearing; however, there is nothing in Father's testimony upon which to justify compelling Ms. Reguli to show cause why she should not be held in contempt, not to mention convicting Ms. Reguli of criminal contempt.

The trial court expressly stated that the basis for the show cause order was that Father testified on December 11, 2007, that "he did not allow [his son] to have overnight visitation the week of December 3 as ordered by this Court *on the advice of his attorney, Connie Reguli*." (emphasis added). We have examined the record and have determined that Father did not testify that he did not allow visitation on the advice of Ms. Reguli. The testimony of Father upon which this erroneous finding appears to have been based reads as follows: "Because [my son] heard it from his mother at the counseling session and I said, well, that if there's a court order, it's signed by [the trial judge] that would be what we have to do, but *wait until I talk to the attorney. And I did and they had no court order in their hands at the time.*" (emphasis added).

There is simply no evidence upon which to justify the show cause order against Ms. Reguli or a conviction of contempt for "instructing her client" to violate the court's order of November 27. We further wish to comment that it would set a bad precedent to justify show cause orders or contempt convictions based primarily on an attorney's zealous advocacy, when that advocacy appears to be justified on a reasonable interpretation of the facts and law applicable to the issue at hand. Moreover, there is no justification to hold an attorney in contempt based upon the acts or omissions of the attorney's client following a "talk" with their client without evidence proving beyond a reasonable doubt that the attorney "instructed" the client to violate a valid court order that was specific and unambiguous.

We, therefore find, as a matter of law, the facts contained in the record are insufficient to find that Ms. Reguli is guilty of criminal contempt. For this reason, and the fact the oral command from the bench, which was the only lawful order in effect at the time the alleged contemptuous conduct occurred, is missing the essential element of specificity – when the parenting time was to occur – we reverse the conviction of Ms. Reguli for criminal contempt of court.

II.
IMPERTINENT AND UNPROFESSIONAL ASSERTIONS IN MS. REGULI'S BRIEF

Although we have decided the dispositive issues, we feel compelled to address certain statements made by Ms. Reguli in her brief that we deem impertinent and unprofessional. For example, in her brief, Ms. Reguli refers to statements and findings by the trial court as "lies," and she states the actions of the trial court were "calculated" and "illegal."[8]

While an attorney should zealously represent their client, impugning the trial court steps over the boundaries of appropriate conduct. Like here, the attorney in *Ward v. University of the South*, 354 S.W.2d 246, 248 (Tenn. 1962), characterized certain statements by the trial court as "lies." Our Supreme Court found the attorney's assertions constituted "a flagrant violation of all the rules of professional propriety," explaining:

> Webster's New International Dictionary, 2nd Ed., 1957, defines the word lie as "a falsehood uttered or acted for the purpose of deception; an intentional statement of an untruth designed to mislead another; anything which misleads or deceives." In 53 C.J.S. Lie, p. 823, it says "the word 'lie' means an untruth deliberately told; the uttering or acting of that which is false for the purpose of deceiving; intentional misstatement."
>
> Considered in the light of the foregoing authorities defining the word lie, and as the word is commonly used, there is not the slightest excuse for counsel's scandalous and impertinent assertion. It is not only an unwarranted defamatory imputation upon the integrity of one of the most able, conscientious and impartial trial judges in the State, but a flagrant violation of all the rules of professional propriety which govern the conduct of reputable members of the bar in their relations to the courts of which they are officers and in which they are allowed to practice.
>
> While it is entirely proper for counsel in his brief to show errors, and apply the law to them, he is not permitted to insert matters which are defamatory, scandalous, impertinent and untrue. Nor will the courts tolerate, either orally or by brief, their use as a vehicle for abuse of the trial judge, or as a forum for an unsuccessful attorney to vent his spite.

Ward, 354 S.W.2d at 248-49. While Ms. Reguli had the right, indeed the duty to zealously represent her client in this matter, and herself in this appeal, her use of the brief as a vehicle to convey her contempt of the trial court is inexcusable. The Supreme Court in *Ward* also addressed the impropriety of using a brief for such a purpose.

---

[8] We have not included the numerous impertinent and unprofessional assertions in this opinion as we decline to re-publish that which should have never been published by Ms. Reguli.

5 C.J.S. Appeal & Error sec. 1327, p. 346, 347, clearly states the law bearing on this sort of offense, supported by an abundance of authority, as follows:

> "A brief in no case can be used as a vehicle for the conveyance of hatred, contempt, insult, disrespect or professional discourtesy of any nature for the court of review, trial judge, or opposing counsel; invectives are not argument, and have no place in legal discussion, but tend only to produce prejudice and discord.
>
> "The practice of inserting in briefs language which tends to bring ridicule on the trial judge or jury or which impugns his or their motives and conduct, is considered a very reprehensible one and deserving of the strongest censure, and statements objectionable in this regard will not be considered. The penalty therefor seems to depend in a measure on the degree of the offense; in a number of cases the reviewing court has seemed to consider it sufficient to reprimand counsel and sound a note of warning against any further repetition of his misconduct." Sec. 1327, pp. 346, 347.

Counsel, in the instant case, has exercised the practice of law in this state for several years, and by now should be well informed of the rules and standards required of a licensed attorney. Many of these rules and standards are defined in the Canons of Professional Ethics which, by Rule 38, have been incorporated in the Rules of this Court. 185 Tenn. at 889. In making the unwarranted assertion in his brief, counsel obviously chose to ignore and violate these rules. In doing so, his misconduct was highly reprehensible, and he deserves to be and is reprimanded; and he is warned that any further repetitions of misconduct will not be tolerated.

Id. at 249. We echo the rebukes of the Supreme Court in this opinion.[9]

IN CONCLUSION

The judgment of the trial court is reversed, and this matter is remanded with costs of appeal assessed equally against Attorney Connie Reguli and the State of Tennessee.

FRANK G. CLEMENT, JR., JUDGE

[9] Whether Ms. Reguli is deserving of reprimand for her impertinent and unprofessional personal attack and criticism of the trial court is up to the Board of Professional Responsibility.